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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 496

LAWYERS COUNTY TRUST COMPANY, *Petitioner,*

against

WILLIAM REICHERT AND PAUL KOLLMAR, INDIVIDUALLY AND AS CO-PARTNERS TRADING UNDER THE NAME OF W. REICHERT & CO., BANKRUPTS.

SUPPLEMENTAL BRIEF FOR PETITIONER AND MOTION TO ADVANCE.

The question presented in this petition for a writ of certiorari is whether this Court by the amendment of April 17, 1933, to General Order No. XXXII in Bankruptcy intended to put it altogether beyond the power of the Bankruptcy Court to grant an extension of time within which a creditor opposing discharge may file his written specifications of the grounds of his opposition, where such creditor duly appears on the return day, objects to the discharge and shows good cause for such an extension. The District Court and the Circuit Court of Appeals for the Second Circuit held that such was the effect of the amendment to this General Order. In our petition for a writ of certiorari we point out that the decision of the Circuit Court of Appeals

for the Second Circuit in this case is in direct conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *In re Lerner,* 70 F. (2d) 938, wherein the Circuit Court of Appeals for the Seventh Circuit held that the amendment did not rob the court of the power to grant an extension upon good cause shown. This Court, on October 8 last, granted a writ of certiorari in the *Lerner* case (No. 292, present term, *Lerner* v. *First Wisconsin National Bank et al.*), and it is assumed that the writ will be granted in this case also in view of the direct conflict. We believe that there are special reasons, as follows, why this Court should grant the writ in this case and not merely hold the petition pending the disposition of the *Lerner* case:

(1) While the opinion of the Circuit Court of Appeals in the *Lerner* case proceeds upon the ground that the amendment to General Order No. XXXII was not intended to take away from the Bankruptcy Court the power to permit amendments of pleadings or extensions of time, it also proceeds upon the alternative ground of estoppel—for that Court in its opinion points out that the petitioner in that case had acquiesced in the request for an extension and would not be heard later to challenge the order of extension. There are no findings in our case that the respondents acquiesced in the extension. Thus, there may be a material distinction between the cases notwithstanding that the two Circuit Courts of Appeals are in direct conflict as to the construction of the amended General Order.

(2) We present in Point (2) of our petition for a writ of certiorari (pp. 5-7) an argument in support of our view of the meaning of the General Order which has not been presented in any of the briefs filed in No. 292 and has not been considered by any of the several courts which have had occasion to consider the question of the construction

of the amended General Order. In the cases in which the point has arisen, both in the opinion of the courts and in the briefs of counsel, argument has revolved around the power of bankruptcy courts, as courts of equity, to relieve defaults or to grant extensions or to permit amendments of pleadings, but, so far as we are aware, our argument based upon the reason for the change which this Court made in the General Order as shown by public documents relating to the evil to be cured, has not heretofore been advanced, and we believe that we should have opportunity to present this argument to the Court more fully.

(3) We are also advised that counsel for the respondents in the *Lerner* case No. 292 are not as yet certain whether they will present an oral argument. We believe that both sides of this question should be presented to the Court and therefore submit that we should be permitted to participate in the oral argument.

Accordingly, we respectfully move that the Court grant the writ of certiorari in this case and assign it for argument at an early date, with the *Lerner* case, No. 292.

Respectfully submitted,

HOWARD MYERS,
JOSEPH K. GUERIN,
SAUL S. MYERS,
Counsel for Petitioner.